

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Complaint of Randall Ehrlich

Docket No. C2020-1

PRESIDING OFFICER'S RULING ISSUING INTERMEDIATE DECISION AND
DISMISSING COMPLAINT WITHOUT PREJUDICE

(Issued June 2, 2020)

I. Introduction

On March 17, 2020, the Commission appointed the undersigned as the Presiding Officer to set a procedural schedule and conduct limited discovery for the purpose of determining five disputed issues of fact in this case concerning whether the Postal Service violated 39 U.S.C. § 403(c).¹ After examination of the disputed issues identified by the Commission, the Presiding Officer provides a public, written intermediate decision including findings of fact and conclusions of law on the issues raised in this proceeding. *See id.* at 8. Additionally, because of the restoration of delivery to the front porch mailbox at Complainant's residence, the matter is dismissed without prejudice for Complainant to request to reopen the case within six months of this intermediate decision becoming final, if another dog hold is instituted during that period without sufficient justification.

¹ Order Denying Postal Service Motion to Dismiss Complaint and Notice of Limited Formal Proceedings, March 17, 2020, at 8 (Order No. 5455).

II. Procedural History

On December 23, 2019, Complainant Randall Ehrlich filed a complaint pursuant to 39 U.S.C. §§ 3662(a) and 403(c) concerning an ongoing suspension of mail service to his residence.² On January 13, 2020, the Postal Service filed its first motion to dismiss,³ which the Complainant opposed.⁴ Chairman's Information Request No. 1 was issued on January 16, 2020,⁵ to which the Postal Service responded on January 23, 2020.⁶ Chairman's Information Request No. 2⁷ was issued February 4, 2020, to which the Postal Service responded on February 18, 2020,⁸ and Complainant replied on February 24, 2020.⁹ On March 17, 2020, the Commission concluded that the Complaint raised material issues of fact, and therefore denied the Postal Service's January 13 Motion to Dismiss. Order No. 5455 at 7. Additionally, the Commission appointed the undersigned as Presiding Officer to set a procedural schedule, conduct limited discovery for the purpose of determining five disputed issues, and provide an intermediate decision including findings of fact and conclusions of law. *Id.* at 8.

² Complaint of Randall Ehrlich, December 23, 2019 (Complaint).

³ United States Postal Service Motion to Dismiss with Prejudice the Complaint of Randall Ehrlich, January 13, 2020 (January 13 Motion to Dismiss).

⁴ Response to Motion to Dismiss, January 31, 2020 (January 31 Response).

⁵ Chairman's Information Request No. 1, January 16, 2020 (CHIR No. 1).

⁶ Responses of the United States Postal Service to Questions No 1-2 of Chairman's Information Request No. 1, January 23, 2020 (Response to CHIR No. 1).

⁷ Chairman's Information Request No. 2, February 4, 2020 (CHIR No. 2).

⁸ Response of the United States Postal Service to Questions 1-4 of Chairman's Information Request No. 2, February 18, 2020 (Response to CHIR No. 2). The Postal Service requested and received an extension of time to respond to CHIR No. 2. United States Postal Service Motion for Extension of Time to File Response to Questions 1-4 of Chairman's Information Request No. 2, February 11, 2020. Order Granting Motion for Extension of Time to File Responses to Chairman's Information Request No. 2, February 12, 2020 (Order No. 5425).

⁹ Response to USPS's Answers to Chairman Information Request No. 2, with Third Ehrlich Declaration, February 24, 2020. The Commission granted Complainant additional time to file this response. Order No. 5425 at 2.

On March 18, 2020, a prehearing teleconference between the parties was scheduled and initial case management procedures were established.¹⁰ On April 10, 2020, the parties filed a joint prehearing conference memorandum, containing joint stipulations of fact, in compliance with POR No. C2020-1/1.¹¹ On April 15, 2020, the prehearing teleconference was held and the procedural schedule was established.¹² On April 16, 2020, the Presiding Officer's First Set of Interrogatories to the Complainant and the Presiding Officer's First Set of Interrogatories to the United States Postal Service were served.¹³ On April 24, 2020, the Postal Service's request for an indefinite abeyance of this proceeding was denied.¹⁴ Modifications were made to the procedural schedule and discovery deadlines at the requests of the parties.¹⁵

On May 13, 2020, Complainant filed a motion requesting that the Commission expand the issues under consideration to include whether the Seattle District Animal/Insect Policy was discriminatory on its face and whether the mail carrier engaged in retaliatory, harassing, and destructive behavior.¹⁶ On May 20, 2020, the Postal Service filed its opposition.¹⁷ On May 22, 2020, the Commission denied this motion.¹⁸ In denying the request to address internal Postal Service personnel issues such as the assignment of the mail carrier and disciplinary action against the mail

¹⁰ Presiding Officer's Ruling Scheduling Prehearing Teleconference and Establishing Initial Case Management Procedures, March 18, 2020 (POR No. C2020-1/1).

¹¹ Joint Prehearing Conference Memorandum, April 10, 2020 (Joint Memorandum).

¹² Presiding Officer's Ruling Establishing Procedural Schedule and Additional Case Management Procedures, April 16, 2020 (POR No. C2020-1/2); Notice of Posting of Recording, April 17, 2020.

¹³ Certificate Regarding Discovery, April 16, 2020.

¹⁴ Presiding Officer's Ruling Denying Request for an Indefinite Abeyance and Granting 30-Day Extension of Procedural Deadlines, April 24, 2020 (POR No. C2020-1/3).

¹⁵ *Id.*; Presiding Officer's Ruling Adjusting Procedural Schedule, May 8, 2020 (POR No. C2020-1/4).

¹⁶ Complainant's Motion to Expand Issues, May 13, 2020 (Motion to Expand).

¹⁷ United States Postal Service's Opposition to Complainant's Motion to Expand Issues, May 20, 2020 (Opposition to Expansion).

¹⁸ Order Denying Motion to Expand Issues, May 22, 2020 (Order No. 5519).

carrier, the Commission reiterated that it lacks jurisdiction over such issues and cannot provide relief such as removing the mail carrier from her route or initiating disciplinary action against her or any other Postal Service personnel. *Id.* at 5. In denying the request to address whether the Seattle District Animal/Insect Policy was discriminatory on its face, the Commission observed that the Complainant did not need to prove such issues in order to state a claim that applying this policy to Complainant (*e.g.*, maintaining suspension of home delivery until he agreed to relocate his mailbox to a particular location) may violate 39 U.S.C. § 403(c). *Id.* at 5-6.

On May 22, 2020, asserting that delivery had been permanently restored, the Postal Service filed a motion to dismiss the Complaint with prejudice and stay all deadlines, including discovery, pending resolution.¹⁹ On May 26, 2020, two approaching discovery deadlines were deferred for two weeks in order to allow time for the Complainant to respond.²⁰ On May 29, 2020, Complainant filed a response opposing dismissal.²¹

III. Intermediate Decision

Pursuant to Order No. 5455 and 39 C.F.R. §§ 3001.23(a)(9) and 3001.39,²² the following five issues are examined to resolve whether a violation of 39 U.S.C. § 403 occurred:

1. Whether any dogs remain at Complainant's residence that are aggressive or could be a threat to carrier safety.

¹⁹ United States Postal Service Motion to Dismiss with Prejudice the Complaint of Randall Ehrlich and Stay Deadlines, May 22, 2020 (May 22 Motion to Dismiss)

²⁰ Presiding Officer's Ruling Deferring Certain Discovery Deadlines, May 26, 2020 (POR No. C2020-1/5).

²¹ Response to Motion to Dismiss, May 29, 2020 (May 29 Response).

²² Effective April 20, 2020, the Commission reorganized the applicable rules of practice. See Docket No. RM2019-13, Order Reorganizing Commission Regulations and Amending Rules of Practice, January 16, 2020, at 21, App'x A at 2 (Order No. 5407) (amending former 39 C.F.R. §§ 3001.23 and 3001.39 to existing 39 C.F.R. §§ 3010.106 and 3010.335, respectively). Because this case was initiated prior to the reorganization, this intermediate decision uses the former regulatory numbering.

2. Whether postal management followed non-discriminatory processes in its continuance of a dog hold on Complainant's residence.
3. Whether the alternate mailbox site proposed by the Complainant was a reasonable compromise between carrier safety and Complainant's security concerns.
4. Whether the Complainant is obligated to comply with a mailbox relocation if there are no aggressive dogs remaining at his residence.
5. Whether a locked mailbox at the mailbox site approved by the Postal Service would alleviate Complainant's security concerns.

Order No. 5455 at 8.

A. Nature of the Dispute

Complainant alleges that shortly after an interaction between his dog Cookie and a mail carrier at his residence in July of 2015, mail has not been delivered to his front porch mailbox. Complaint at 4-5. He alleges that the Postal Service unreasonably discriminated against him by suspending delivery to his front porch mailbox. *Id.* at 13. He maintains that delivery to his front porch mailbox does not pose a danger to the mail carrier.²³ He alleges that he is similarly situated to persons "who enjoy residential mail delivery, includ[ing] customers with well-behaved dogs and any other resident whose premises present no danger to the letter carrier." Complaint at 13. He requests that the Commission require delivery to be restored to his front porch mailbox and "[t]hat all discriminatory acts and omissions against Ehrlich cease immediately." *Id.* at 14. He also seeks "such other and further relief as the Commission may deem just and proper." *Id.*

Previously, the Postal Service took the position that although the Complainant had informed local management "that different dog(s) are present at his residence than

²³ *Id.*; see also January 31 Response at 4 ("For all intents and purposes, [Complainant] is like any other resident whose premises present no danger to the letter carrier yet he has been ordered to relocate his mailbox to the street, risking mail theft, or never get mail again.").

the German Shepherd dog that was initially there in 2015, he has not complied with local management's instructions to relocate his mailbox along his fence as requested or demonstrated that his animals are properly secured," and therefore the Postal Service reasonably maintained a dog hold. Response to CHIR No. 1, question 1.b.

Additionally, the Postal Service has argued that the matter is moot previously; however, the Commission found otherwise because the Postal Service continued to assert that aggressive dog(s) remained at Complainant's residence, despite Complainant's statements to the contrary. See Order No. 5455 at 7; see also January 13 Motion to Dismiss at 10; Response to CHIR No. 1, question 1.b; Response to CHIR No. 2, question 2.a.

B. Issue 1: Whether any dogs remain at Complainant's residence that are aggressive or could be a threat to carrier safety.

In July 2015, Complainant's mail carrier reported that Complainant's dog (a German Shepherd, named Cookie, who was fostered by Complainant) behaved aggressively when mail was being delivered to Complainant's front porch mailbox in July 2015. Joint Memorandum at § 3, ¶¶ 7, 9. Although Complainant disputed (and continues to dispute) the characterization of Cookie's behavior, a Memorandum of Understanding (MOU) – Discontinuance of Mail Delivery dated July 20, 2015, was executed. *Id.* at § 3, ¶¶ 9, 11.

In August 2015, after Cookie was adopted to another owner, Complainant fostered a second German Shepherd, named Lilah. *Id.* at § 3, ¶ 12. Also during August 2015, Complainant's mail carrier reported that when she delivered mail to Complainant's front porch mailbox, Complainant's dog was not kept behind a solid closed door. *Id.* at § 3, ¶ 13. Complainant and local Postal Service management discussed relocation of the mailbox to a different site on Complainant's property on numerous occasions but were unable to reach agreement. *Id.* at § 3, ¶¶ 18-25.

"Complainant currently has a dog named Ilsa, whom he has had at his residence for three years." *Id.* at § 3, ¶ 24. From May 8, 2020 through May 21, 2020, a management official from the Ballard Carrier Annex delivered mail to a mailbox located

on Complainant's front porch to assess the presence of any safety hazards. Opposition to Expansion, Ex. 1 at 3; May 22 Motion to Dismiss, Ex. 1 at 1. The management official reported that "after completing the two-week safety investigation yesterday, May 21, I did not observe any safety hazards that would impede the letter carrier from delivering mail to your front porch mailbox. Specifically, I did not encounter any threatening behavior from any animal(s) at your delivery address." May 22 Motion to Dismiss, Ex. 1 at 1.

C. Issue 2: Whether postal management followed non-discriminatory processes in its continuance of a dog hold on Complainant's residence.

As of May 22, 2020, acknowledging that no safety hazards impede delivery to the front porch mailbox, the Postal Service "permanently" restored delivery service to the front porch mailbox at Complainant's residence. May 22 Motion to Dismiss, Ex. 1 at 1. The Postal Service maintains that if a new safety hazard is reported, "a temporary dog hold will issue for the delivery address until management investigates to determine if a safety hazard or a good faith basis exists to discontinue mail delivery service." *Id.*, Ex. 1 at 1. The Postal Service argues that even if a violation of 39 U.S.C. § 403(c) had occurred, the permanent restoration of delivery service to Complainant's front porch mailbox renders the controversy moot or insufficient as a matter of law, because Complainant has received the only relief which the Commission may grant. *Id.* at 5.

Complainant does not contest that delivery has been restored or that some issues may be mooted by the Postal Service's action; however, he expresses concern that false reports of dog aggression and some aspects of the wording of the Seattle District Animal/Insect Policy may allow the Postal Service to suspend delivery in the future without sufficient justification. May 29 Response at 1-3.

D. Issues 3-5: Relocation of the mailbox to an alternative site.

Based on its acknowledgment that no safety hazards impede delivery to the front porch mailbox, the Postal Service has restored delivery service to that site rather than require mailbox relocation. May 22 Motion to Dismiss, Ex. 1 at 1. Complainant does not contest that delivery has been restored to the front porch mailbox site; however, he

expresses concern that false reports of dog aggression and some aspects of the wording of the Seattle District Animal/Insect Policy may allow the Postal Service to suspend delivery in the future without sufficient justification. May 29 Response at 1-3.

E. Intermediate Decision

The Presiding Officer finds that the parties presently do not dispute the following facts: a German Shepherd dog (Ilsa) remains at Complainant's residence; Ilsa is different from either dog that was previously reported as posing a danger to the mail carrier during 2015; no safety hazards impede delivery to the Complainant's front porch mailbox at this time; and Complainant is no longer obligated to relocate his mailbox from the front porch. Accordingly, as a matter of law, the Presiding Officer finds that the relief sought by Complainant regarding restoration of delivery to the front porch mailbox at Complainant's residence has been rendered moot. The resolution of matters of fact that were previously disputed and the restoration of delivery to the front porch mailbox renders the conduct of discovery and taking of evidence as previously planned unnecessary. Therefore, all obligations for either party to comply with any procedural deadlines (including discovery timeframes and the hearing date) previously established by the Presiding Officer are removed. This intermediate decision is submitted to the Commission and shall become the final action of the Commission 30 days after its issuance unless briefs on exceptions are filed in accordance with 39 C.F.R. § 3001.40 or the Commission issues an order to review this intermediate decision *sua sponte*. 39 C.F.R. § 3001.39(f).

IV. Motion to Dismiss

Based on this intermediate decision, the Presiding Officer evaluates the May 22 Motion to Dismiss and the May 29 Response.²⁴ Although the Postal Service asserts that it is entitled to dismissal of the Complaint with prejudice, dismissal is granted

²⁴ The Presiding Officer may dispose of a motion to dismiss upon or after issuing the intermediate decision. See 39 C.F.R. § 3001.23(a)(7); see *also* Order No. 5407 at 7-8.

without prejudice for Complainant to request to reopen the case within six months of this intermediate decision becoming final. If another dog hold is instituted against Complainant's residence during that period without sufficient justification, Complainant may file a motion requesting to reopen the matter and reestablish procedural and discovery timeframes in Docket No. C2020-1 summarizing the underlying change(s) in circumstances and the reason(s) why the Complainant asserts that the dog hold lacks sufficient justification. If the matter is reopened, procedural and discovery timeframes will be reestablished and modified through an order issued by the Commission and/or a ruling issued by the Presiding Officer. If the matter is not reopened, the Complaint shall be dismissed with prejudice six months after this intermediate decision becomes final.

The basis for this ruling is to ensure that delivery is not revoked without sufficient justification. Given the extensive procedural history of this dispute before the Commission in two dockets²⁵ and that an investigation was undertaken by local management and delivery resumed after the resolution of legal bars interposed by the Postal Service and the service of discovery requests, such a monitoring mechanism would be helpful to reduce the likelihood that this case is refiled again. This ruling also balances the Postal Service's reasonable need to ensure the safety of its personnel because it does not interfere with the Postal Service's ability to suspend delivery due to a legitimate safety threat. Should no future issues occur as local management hopes (May 22 Motion to Dismiss, Ex. 1 at 1), no litigation burden or expense will be incurred by either party, thereby giving consideration to proportionality with respect to the limited scope of issues presented by this case.

²⁵ The Commission dismissed a prior complaint brought by the Complainant with some similar allegations that did not raise allegations of discriminatory treatment against him distinct from other similarly situated individuals. *Compare Ehrlich v. Postal Regulatory Commission*, D.C. Cir. 19-1004, ECF No. 1819556, at n.1 *with* Complaint at 13.

V. RULING

1. This intermediate decision finds that the controversy has been rendered moot by the restoration of delivery to the front porch mailbox at Complainant's residence.
2. This intermediate decision is submitted to the Commission and shall become the final action of the Commission 30 days after today, unless briefs on exceptions are filed in accordance with 39 C.F.R. § 3001.40 or the Commission issues an order to review this intermediate decision *sua sponte*.
3. All obligations for either party to comply with any procedural and discovery deadlines previously established by the Presiding Officer are removed.
4. Based on this intermediate decision, the matter is dismissed without prejudice for Complainant to request to reopen the case within six months of this intermediate decision becoming final. If another dog hold is instituted against Complainant's residence during that period without sufficient justification, Complainant may file a motion requesting to reopen the matter and reestablish procedural and discovery timeframes in Docket No. C2020-1 summarizing the underlying change(s) in circumstances and the reason(s) why the Complainant asserts that the dog hold lacks sufficient justification. If the matter is not reopened, the Complaint shall be dismissed with prejudice six months after this intermediate decision becomes final.

Lauren A. D'Agostino
Presiding Officer